

STATE OF MICHIGAN
COURT OF APPEALS

In re Conservatorship of KEVIN MICHAEL MURPHY.

KATHLEEN M. POTTS, Conservator for KEVIN MICHAEL MURPHY, a Legally Incapacitated Person, and CHELSEA RETIREMENT COMMUNITY,

UNPUBLISHED
July 19, 2011

Petitioners-Appellees,

v

SEAN M. MURPHY,

No. 298624
Jackson Probate Court
LC No. 10-011561-CA

Respondent-Appellant.

Before: SAAD, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Respondent Sean M. Murphy appeals the probate court's June 10, 2010 order appointing his sister Kathleen M. Potts as conservator for their father Kevin Michael Murphy. We dismiss this appeal in part as moot and affirm in part.

Respondent argues that the probate court erred by appointing a temporary conservator and that the appointment process for the temporary conservator denied him due process. Petitioners maintain that this issue is moot. Generally, this Court will not review a moot issue. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights[,] and "[a]n issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief." *Id.* This Court will review a moot issue, however, if it is "one of public significance that is likely to recur, yet evade judicial review." *Detroit v Ambassador Bridge Co*, 481 Mich 29, 50; 748 NW2d 221 (2008).

After the evidentiary hearing on June 10, 2010, the probate court appointed Potts as the permanent conservator. Although respondent contends that the appointment of the temporary conservator was improper and that he was denied due process, he fails to identify any relief that can be provided to him based on those allegations. The appointment of the permanent

conservator made it impossible for this Court to grant any relief regarding the temporary conservator. *B P 7*, 231 Mich App at 359. Moreover, none of the issues respondent raises concerning the temporary conservator are of public significance and likely to recur, yet evade judicial review. *Detroit*, 481 Mich at 50.

To the extent respondent raises any arguments concerning the appointment of Potts as the permanent conservator, respondent abandons those claims because he only gives them cursory treatment and fails to provide citing authority. *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003); *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). At best, respondent asserts that the probate court did not enforce the correct burden of proof at the June 10, 2010 hearing and did not properly appoint Potts as conservator pursuant to the requirements of MCL 700.5401(3)(a) and (b). To the contrary, the probate court specifically found by clear and convincing evidence that Kevin needed a conservator, MCL 700.5406(7), and it properly appointed Potts as conservator pursuant to MCL 700.5401. Although respondent disputed the probate court's findings regarding the conflicting legal documents purportedly authorizing the parties to act on Kevin's behalf, he did not dispute that Kevin needed a conservator. In fact, respondent counter petitioned for conservatorship and guardianship and informed the probate court at the hearing that he was willing to act as permanent conservator and guardian.

We also reject respondent's assertion that the probate court improperly allowed Potts to withhold respondent's property and that it violated his due process rights by proceeding with an evidentiary hearing when he did not have access to evidence that he wanted to present.

The interpretation and proper application of a court rule involves questions of law that we review de novo. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009); *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). We also review constitutional issues de novo. *Kampf v Kampf*, 237 Mich App 377, 381; 603 NW2d 295 (1999). However, "appeals from a probate decision are on the record, not de novo." *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008); MCL 600.866(1).

The probate court did not err when it declined to enter an order allowing respondent access to property, which he claimed he was unable to obtain because of a PPO his mother entered against him. Under MCR 2.613(B), the probate court could not enter any judgment or order that would effectively set aside or vacate a judgment entered in the PPO case involving respondent and his mother. Only the circuit court judge who entered the PPO order, which affected respondent's ability to access his property, could vacate or stay that order. The probate judge was clearly not a judge otherwise empowered to rule in the PPO matter. See *Estes v Titus*, 481 Mich 573, 586; 751 NW2d 493 (2008).

Moreover, the probate court did not err or violate respondent's due process rights by holding an evidentiary hearing when respondent claimed that he did not have access to evidence. The Fourteenth Amendment of the United States Constitution and Article 1, § 17 of the Michigan Constitution guarantee that no person shall be deprived of "life, liberty, or property, without due process of law." US Const, Am XIV; Const 1963, art 1, § 17; *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173; 667 NW2d 93 (2003). "The essentials of procedural

due process are adequate notice, an opportunity to be heard, and a fair and impartial tribunal.” *Hughes v Almena Twp*, 284 Mich App 50, 69; 771 NW2d 453 (2009).

Here, Potts initially petitioned for conservatorship on March 11, 2010, and the evidentiary hearing on the petition was not held until June 10, 2010. Thus, respondent had approximately three months to obtain evidence that he wanted to present at the hearing, which was more than sufficient time to prepare. Respondent’s lack of readiness despite having sufficient time to gather evidence does not constitute a due process violation by the probate court. *DeGeorge v Warheit*, 276 Mich App 587, 593-594; 741 NW2d 384 (2007). Furthermore, the evidence respondent wanted to present regarding Kevin’s incapacitation was cumulative and not outcome determinative based on the evidence of record and rulings at the evidentiary hearing.

Appeal dismissed in part as moot and affirmed in part.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Pat M. Donofrio